

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on policies and practices for advanced metering, demand response, and dynamic pricing

Rulemaking 02-06-001

ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO

1. Summary.

As required by Pub. Util. Code § 1701.1(b), the Assigned Commissioner issues the following ruling and scoping memo describing the issues to be considered in this proceeding and the applicable timetable for its resolution. In addition, as required by Rules 6(c)(2) and 6.3 of the Commission's Rules of Practice and Procedure (Rules) following the July 16, 2002 prehearing conference (PHC), the Assigned Commissioner herein rules on the category, the need for evidentiary hearings including the principal hearing officer designation, and the projected submission date of this proceeding. Only the category ruling may be appealed, as provided in Rule 6.4.

The schedule established below is consistent with Senate Bill (SB) 960, which requires that the Commission establish reasonable time periods for resolution of its proceedings, not exceeding 18 months in this instance (Stats. 1996, ch. 856, § 1).

2. Background

The Commission opened its Order Instituting Rulemaking (OIR) in order to develop demand flexibility as a resource to enhance electric system reliability. The Commission envisioned crafting comprehensive policy in the investor owned utility service territories of respondents Pacific Gas & Electric (PG&E), San Diego Gas & Electric (SDG&E) and Southern California Edison Company (Edison), while also encouraging the participation of other small and multi-jurisdictional IOUs. The goal is to outline policies covering a broad spectrum of options to be offered to customers in return for making their demand-responsive resources available to the system.

The Commission stated that its first task is to consider a strategic approach to the orderly development of demand-responsiveness capability in the California electricity market over the next 18 months (OIR, *mimeo.*, p. 3), and stated that it intended to coordinate this effort with related efforts of the California Energy Commission (CEC), the California Power Authority (CPA), and other involved or interested state agencies. Development of this strategic approach is our essential goal in Phase 1 of this proceeding.

On July 16, 2002, a PHC was held in which Commission decisionmakers shared the dais with decisionmakers from the CEC and CPA.¹ At the PHC, the

¹ As directed in the OIR, PHC statements were filed by the California Consumer Empowerment Alliance (CCEA); Converge Technologies; Edison; Good Cents Solutions; the Office of Ratepayer Advocates (ORA); PG&E; PowerWeb Technologies; SDG&E; the San Francisco Community Power Cooperative; and the Utility Reform Network (TURN).

administrative law judge (ALJ) outlined a procedural framework designed to further cooperative strategic policymaking by the three agencies. The ALJ outlined this framework in more detail in a Ruling Following Prehearing Conference (Ruling) issued August 1, 2002, and requested written comments from parties. By the August 9, 2002 due date, the Commission had received written comments from eleven parties.²

In the August 1 Ruling, the ALJ proposed that the work required in Phase 1 be done by three working groups which would focus on (1) overall policy issues; (2) large customer (>200 kilowatts in average monthly demand) issues; and (3) small commercial/residential customer issues. Most of those who filed comments reacted to this proposal positively, but also requested further clarification about the overall goals of Phase 1 and the actual roles and interactions of the three working groups. We provide this clarification now.

Working Group 1's principal task is to build the record necessary to meet the interagency goal of developing a strategic approach to orderly development of demand responsiveness capability. Indeed this group is comprised of decisionmakers from the Commission, the CEC and the CPA, whose task will be to guide the efforts of Working Groups 2 and 3, and to scope and coordinate those efforts with reference to the goals outlined in the OIR. Working Group 1 is not an ultimate decisionmaking body. Clearly each of its members can only make recommendations to his/her agency in its ultimate decisionmaking

² Comments were filed by CCEA; the Coalition of California Utility Employees; Consumers Union; IM Serv NA.; Invensys Home Control Systems; ORA; PG&E; TruePricing, Inc.; TURN; SDG&E; and Edison.

exercise, as I will do in the draft or proposed decision submitted to the Commission at the conclusion of Phase 1. It is my hope and expectation that each agency's ultimate decisionmaking effort will be enhanced by the interagency record development approach followed here.

As will all working groups, Working Group 1 will provide an agenda in advance of its meetings, in order to facilitate full participation. For Working Group 1, the ALJ and agency staff members will frame the issues for discussion and will invite and ensure full participation by respondents and other attendees. In working Group 1, I prefer to focus on interagency coordination, in developing the record and therefore limit formal membership to the involved agencies. I do believe that meaningful participation by parties designed to inform and assist the interagency discussions is critical, and the ALJ will play a key role in facilitating this participation. As indicated previously, a ruling will issue after each Working Group 1 session summarizing all key points discussed and soliciting comments or proposals to further the efforts of the agencies in developing a suitable record in Phase 1.

Commenters have requested that we clarify the interrelationships between and among the working groups. As noted in the August 1 ruling, the ALJ will play a key role in coordinating these groups. In addition to her role as Working Group 1 facilitator, she will observe the meetings of Working Groups 2 and 3 and make progress reports to the leadership of Working Group 1 so that coordination issues are resolved. In addition, we expect that a number of staff members from all three agencies will participate in and monitor all working group sessions.

I anticipate, and have provided in this ruling, that Working Groups 2 and 3 will make reports summarizing their recommendations and that such reports

will reflect the consensus recommendations of the workshop participants, taking care to fully address any dissenting views. These reports will be neutral in tone and reflect the discussion during the working group meetings. We will take comments on these reports, as provided in the schedule for the proceeding.

Working Group facilitators, with the exception of those facilitating Working Group 1's efforts, will not have decisionmaking responsibilities in this proceeding. As discussed above, only the agencies themselves have ultimate decisionmaking authority. The facilitators are designated in order to be responsible for workshop agendas, general flow of the meetings and to organize discussion.

After the workshop process, the ALJ will prepare the draft or proposed decision for the Commission on the basis of the record, which will include:

- (1) comments on rulings issued during the Working Group 1 process;
- (2) Working Group 2 and Working Group 3 reports and comments thereon;
- (3) proposals and other information or reports solicited from parties during the working group process, or otherwise during the course of this proceeding. The Commission will issue its decision, either adopting or modifying the ALJ's recommendation, after that. As well, the CEC and CPA will pursue their independent decisionmaking processes at the conclusion of Phase 1.

3. Scoping Memo Detailing Issues to be Addressed and Schedule for Resolution of this Proceeding

The preliminary scoping memo in the OIR detailed various program approaches to encouraging customer load reduction, including "emergency" strategies such as those being addressed in R.00-10-002 dealing with interruptible policies and programs. We clarify that we do not intend to address those "emergency" strategies in Phase 1 of this proceeding. Working Groups 2 and 3

will focus on addressing strategies noted in the OIR as “Flexible/Dispatchable.” (OIR, *mimeo.*, p. 3).

As our thinking has evolved since issuing the OIR, we have opted to focus Phase 1 of this proceeding more heavily on strategic policy setting. The importance of coordinated policy setting and strategic thinking on these issues, especially among the involved agencies, leads us to the desire to develop a robust policy framework as a foundation for future implementation.

We do not, however, want to spend too much time planning and miss opportunities for further data collection and/or demonstrated implementation success. Thus, in Phase 1 we are attempting to strike a balance between rational policy setting and early action, by asking Working Groups 2 and 3 to delve further into practical issues of tariff and/or program development and its timing.

An early key task for Working Group 1 will be to discuss the advantages and disadvantages of further pilot programs versus larger-scale program and tariff development. In their comments on the August 1 ALJ Ruling, some parties suggest we focus on the needs of large customers first and assure an initial “win” through quick deployment of a tariff for customers with advanced meters already installed. Others urge us to focus on small customers first, since they represent the largest potential demand response resource and solutions developed for large customers are not always easily transferable to smaller ones.³

³ TruePricing, Inc.’s Comments on August 1 Ruling, pp. 1-2.

Here again, by setting up Working Groups 2 and 3, we are opting for a parallel path. It is our expectation that it may be easier to make faster strides in developing tariffs for the large customers for earlier implementation, while the issues associated with smaller customers may require a longer term with more data collection. We expect that Working Group 1 will discuss these options, along with a more detailed workplan and assignment for Working Groups 2 and 3.

In the August 1 Ruling we noted the controversy over whether the proceeding should be expanded to included gas metering issues. Views are split on this issue.⁴ We will place this on the agenda for the first Working Group 1 meeting for discussion. Similarly, there is an issue regarding how to integrate direct access customer metering issues into the proceeding. Again, we will place this issue on the agenda for the first Working Group 1 meeting.

The CCEA Petition for Modification of Decision (D.) 97-05-039 filed in R.94-04-031, which seeks a comprehensive updating of the Commission's metering policies, has been consolidated with this proceeding.⁵ There was some discussion of this issue at the PHC, and the consensus was that the specific issues raised by CCEA's petition that are not resolved in Phase 1 can be dealt with in the subsequent phase of the proceeding (PHC Tr. 65-66). I believe that the issues

⁴ See the separate Comments of PG&E and SDG&E to the August 1 Ruling.

⁵ OIR, *mimeo.*, p.6. CCEA earlier had recommended in formal comments filed in R.94-04-031 that its Petition be transferred to this proceeding and that respondents be ordered to provide cost data for various advanced metering scenarios.

raised in the petition will be adequately addressed by this proceeding in due course.

Most commenters believe the schedule proposed in the August 1 ruling is too compressed, especially if time is allowed for comment on the various workshop reports. We accommodate these concerns below in the schedule for Phase 1. This schedule supersedes and replaces the schedule outlined in the OIR as well as the one in the August 1 ALJ ruling. At the conclusion of Phase 1, or after the Commission's ultimate decision has been rendered, as appropriate, I will issue another schedule addressing the next phase of the proceeding, and addressing many issues highlighted in the OIR, but which are currently deferred. These include infrastructure development and full-scale deployment options and issues.

4. Procedural Schedule⁶

Working Group 1 Meeting	August 26, 2002, San Francisco, 1:30 pm
Working Group 1 Meeting	September 6 or 12, 2002 (date in flux)
Experiential Workshop 1 (Tariffs/Programs)	September 9, 2002
Experiential Workshop 2 (Hardware)	September 10, 2002
Working Group 1 Meeting ⁷	September 16, 2002
Working Group 2 Meeting	September 18, 2002

⁶ Locations and times of these meetings will appear on the Commission Daily Calendar.

⁷ As noted in the August 1 Ruling, Working Group 1 may meet on additional occasions following this final scheduled meeting, if that is necessary.

Working Group 3 Meeting	September 19, 2002
Working Group 2 Meeting	September 25,2002
Working Group 3 Meeting	September 26, 2002
Working Group 2 Meeting	October 2,2002
Working Group 3 Meeting	October 3, 2002
Working Group 2 Meeting	October 9, 2002
Working Group 3 Meeting	October 14, 2002
Working Group 2 Report	October 28, 2002
Working Group 3 Report	October 31, 2002
Comments on WG 2 Report	November 4, 2002
Comments on WG 3 Report	November 8, 2002
Projected Submission Date	November 8, 2002
Draft Decision Issued	December 9, 2002
Commission Decision on Phase 1	January 2003

This schedule does not provide for evidentiary hearings, but if they are necessary, they will be scheduled for mid – late November, 2002, and will extend the schedule shown above accordingly. Naturally the ALJ may adjust this schedule if that becomes necessary.

The agendas for all working group meetings will be posted at least 48 hours in advance of the meeting on the Commission's website. In addition, details of the time and location of all meetings will be available on the Commission's Daily Calendar.

As soon as it is available, the program for the Experiential Workshops will be posted on the Commission's website. Those who wish to participate in these workshops should contact Mike Messenger of the CEC at mmesseng@energy.state.ca.us.

5. Category of Proceeding

In its OIR the Commission preliminarily determined that this is a ratesetting proceeding and that evidentiary hearings are anticipated (OIR, *mimeo.*, p. 13). The Commission invited any person who disagreed with its initial ratesetting categorization to make that fact known. No party has done so.

At the PHC, the ALJ and parties discussed the merits of categorizing Phase 1, which involves broad policymaking issues, as quasi-legislative and categorizing the remainder of the proceeding as ratesetting. The Commission has defined “quasi-legislative” proceedings as those “that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rule 5(d)). This certainly describes our task in Phase 1. However there is legitimate concern about avoiding the confusion of multiple categorization. Furthermore, there is a possibility, as some parties acknowledge, that Phase 1 may delve into utility-specific dynamic tariffing issues which are more appropriate to ratesetting, as that term is defined in Rule 5(c). On balance, and despite the fact that much, if not all, of Phase 1, will involve broad policymaking, I affirm the Commission’s preliminary categorization of ratesetting.

6. Need for Evidentiary Hearings

The parties who address this issue believe that it is too early to decide whether evidentiary hearings are necessary.⁸ Edison has expressed concern that evidentiary hearings may be needed if the Commission opts to develop actual tariffs for immediate full-scale implementation, as opposed to pilots preceding such implementation. More fundamentally, the utility is also concerned that the Commission must ensure the adequacy of the decisionmaking record developed through the working group process, and, warns that if the Commission intends to set policy goals about meter ownership, technology specification, and cost recovery, evidentiary hearings may be required to justify policy decisions that may significantly impact utilities, customers, rate design and cost of service.⁹

I agree with the parties who state that it is too early to know whether evidentiary hearings are required in the initial policy setting portion of the proceeding. While it is apparent that hearings will be required later in the proceeding as we delve into implementation details involving metering infrastructure, technology, cost effectiveness, equity impacts, and revenue impacts, we hope to avoid hearings in Phase 1. However that may not be entirely possible. I am confident that the Phase 1 working group process, as described in this ruling, will ensure both the full and fair participation of all involved in this proceeding and a sound decisionmaking record for Phase 1, so

⁸ TURN Comments on August 1 Ruling, pp. 4-5. ORA Comments on August 1 Ruling, p.1. PG&E Comments on August 1 Ruling, p.4. PHC Statement of Edison, p.16.

⁹ Edison Comments on August 1 Ruling, p. 10.

there are no procedural due process concerns that would automatically dictate a requirement for evidentiary hearings in this policymaking exercise. Nonetheless there is a slight possibility that hearings may be required in Phase 1, or very shortly thereafter, to resolve utility-specific tariff issues in connection with pilots designed in Phase 1. For that reason, I will affirm the preliminary hearing determination made in the OIR.

7. Designation of Principal Hearing Officer

Pursuant to Pub. Util. Code § 1701.3, I designate ALJ Lynn T. Carew as the principal hearing officer in this proceeding. With this designation, the ALJ will also serve as presiding officer (Rule 5(k)).

8. Parties and Service List Issues

The service list for this proceeding is attached to this ruling and any updates to the service list will be available on the Commission's website (www.cpuc.ca.gov). Those who are not already parties, but who wish to participate in this proceeding as full parties, with all the rights and obligations associated with party status, must make their request by written motion to intervene, or orally on the record during the proceeding. Those not already participating, but who wish to do so as nonparties, may request that their names be added to the service list (in the "information only" or "state service" category) by sending an e-mail note to ALJ Carew (lrc@cpuc.ca.gov).

In all other respects, the Commission will follow the electronic service protocols attached to the OIR as Appendix A.

9. Rules Governing Ex Parte Communications

This proceeding is subject to Pub. Util. Code § 1701.3(c), which means that ex parte communications are prohibited unless certain statutory requirements

are met (see also, Rule 7(c)). An ex parte communication is defined as “any oral or written communication between a decisionmaker and a person with an interest in a matter before the commission concerning substantive, but not procedural issues, that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter.” (Pub. Util. Code § 1701.1(c))(4)). Commission rules further define the terms “decisionmaker” and “interested person” and only off-the-record communications between these two entities are “ex parte communications.”¹⁰

By law, oral ex parte communications may be permitted by any commissioner if all interested parties are invited and given not less than three business days’ notice. If such a meeting is granted to any individual party, all other parties must be granted individual ex parte meetings of a substantially equal period of time and shall be sent a notice at the time the individual request is granted. Written ex parte communications may be permitted provided that copies of the communication are transmitted to all parties on the same day. (Pub. Util. Code § 1701.3(c); Rule 7(c)). In addition to complying with all of the above requirements, parties must report ex parte communications as specified in Rule 7.1.

IT IS RULED that:

1. The scope of Phase 1 of this proceeding is set forth in Sections 2 and 3 of this ruling.

¹⁰ See Rules 5(e), 5(f) and 5(h).

2. The schedule of this proceeding, including its projected submission date, is set forth in Section 4 of this ruling, and supersedes the schedule outlined in Section IV of the OIR and the August 1 ALJ ruling. The ALJ may make any revisions to this schedule, as necessary to facilitate the efficient management of the proceeding.

3. This proceeding is categorized as ratesetting and evidentiary hearings may be necessary, consistent with the preliminary category and hearing determinations made by the Commission in the OIR. This ruling on category may be appealed, as provided in Rule 6.4.

4. ALJ Lynn T. Carew is the principal hearing officer in this proceeding.

5. This ratesetting proceeding is subject to Pub. Util. Code § 1701.3(c), meaning that ex parte communications are prohibited unless certain statutory requirements are met. Such communications are also governed by Rule 7(c), and must be reported, as provided in Rule 7.1.

6. The official service list is attached to this ruling, and parties shall follow the electronic service protocols appended to the OIR (Appendix A). Those who are not already parties, but who wish to participate in this proceeding as full parties, shall make their request by written motion to intervene, or orally on the record during the proceeding. Those not already participating, but who wish to do so as nonparties, may request that their names be added to the service list (in the “information only” or “state service” category) by sending an e-mail request to ALJ Carew at lrc@cpuc.ca.gov.

Dated August 16, 2002, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey

Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail and by electronic mail this day served a true copy of the original attached Assigned Commissioner Ruling and Scoping Memo on all parties of record in this proceeding or their attorneys of record.

Dated August 16, 2002, at San Francisco, California.

/s/ JANET V. ALVIAR

Janet V. Alviar

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.